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December 14, 2015

Daniel A. Petalas, Esq.
Acting General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

MUR # 6993

OFFICE OF GENERAL
COUNSEL

2015 DEC 14 AM 10:58

RECEIVED
FEDERAL ELECTION
COMMISSION

Re: FEC Complaint: Van Hollen for Senate, and Stacey Maud (Treasurer)

Dear Mr. Petalas:

On behalf of EMILY's List, I write to bring this complaint against Van Hollen for Senate and Stacey Maud, in her official capacity as Treasurer, for knowingly and willfully violating the Federal Election Campaign Act ("FECA" or "the Act") by using information copied from EMILY's List's Federal Election Commission (FEC) disclosure reports to solicit contributions to Van Hollen for Senate, and for failing to include the appropriate disclaimers on a solicitation communication.

FACTUAL BACKGROUND

EMILY's List is a federal non-connected political committee dedicated to supporting the candidacies of pro-choice Democratic women. On October 23, 2015, EMILY's List's digital team produced an email communication comparing Maryland Senate candidates Chris Van Hollen and Donna Edwards. Although the text of the communication clearly identifies Rep. Van Hollen as the "current Democratic opponent [of Rep. Edwards]," the email contained a graphic that inadvertently mislabeled Rep. Van Hollen as "(R)" instead of "(D)." See Exhibit A. The communication was sent to a limited test audience and, within minutes thereafter, EMILY's List was notified of the typographical error and immediately corrected it.

EMILY's List's Vice President of Campaigns, Lucinda Guinn, spoke to the Van Hollen for Senate campaign manager, Sheila O'Connell, during which call Ms. Guinn apologized and explained that it was purely a mistake and in no way intended to characterize Rep. Van Hollen as a Republican. Even though the error was unintentional (and, arguably, very minor), limited to a test audience, and quickly amended, EMILY's List's Executive Director Jessica O'Connell also reached out that same evening to the Van Hollen for Senate campaign manager.¹ During their call the next day, Jessica O'Connell offered to send a corrected version of the original email to the approximately 5,000 recipients who had seen it, but the campaign declined the offer.

¹ Jessica O'Connell and Sheila O'Connell are not related to one another.



Several days later, EMILY's List was notified by several of its donors that they had received a letter from Rosalyn Levy Jonas accusing EMILY's List of "deception" and engaging in "aggressive, misleading tactics" in connection with the communication discussed above. See Exhibit B. The letter solicits support for Van Hollen for Senate, and a Van Hollen for Senate reply-envelope was included with the letter. The letter contains a "union bug" label but does not contain any disclaimers. The return address listed for "Rosalyn Levy Jonas" is the Van Hollen for Senate campaign office address. Upon investigation, EMILY's List discovered that all of the individuals who stated they had received the letter were donors who appeared on EMILY's List's 2015 monthly reports filed with the FEC.

LEGAL ARGUMENT

Under the Act and Commission regulations, information (including contributor names and addresses) contained in publicly available disclosure reports required to be filed by political committees "may not be sold or used by any person for the purpose of soliciting contributions," 52 U.S.C. 30111(a)(4); see also 11 CFR 104.15(a). Congress' stated purpose of these "sale and use" restrictions was to "protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party" and to prevent citizens who make political contributions from "all kinds of harassment" 117 Cong. Rec. 30057-58 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon).

In several advisory opinions, the FEC has concluded that the sale and use restrictions are not implicated where information obtained from disclosure reports is used merely to correct inaccurate information disseminated by a political committee. See AO 1981-05 (Findley) (finding that the use of an opponent's contributor data was permissible for the limited purpose of correcting allegedly defamatory charges made by the opponent); AO 1984-02 (Gramm) (permitting a candidate committee to use the contributor data of a non-connected committee to notify contributors that the solicitations were not authorized by the candidate). More recently, the FEC has permitted the use of contributor data to inform contributors of the opportunity to seek a refund of their political contributions. See, e.g., AO 2009-19 (Club for Growth); AO 2013-16 (PoliticalRefund.org). The key to all of these determinations, however, was the fact that the contributor information was being used exclusively for the purpose of providing contributors with factual information, and explicitly *not* for the purpose of soliciting contributions.

Every single individual who reported receiving the letter signed by Rosalyn Levy Jonas is a contributor through EMILY's List whose name and address appears on the committee's publicly available FEC disclosure reports. Notably, these individuals *do not* also appear on the Van Hollen for Senate disclosure reports, which leads to the conclusion that their names and addresses were taken directly from EMILY's List disclosure reports. Were the purpose of the letter to correct the record by merely stating that Rep. Van Hollen is a Democrat and not a Republican, the use of this contributor information would be permissible.² That is not the case. The entire letter praises the positions of Rep. Van Hollen, bashes his opponent, and inaccurately portrays the EMILY's List email snafu as an intentional act of "deception." It is a far

² There was little record to be corrected; the text of the original email clearly correctly identified Rep. Van Hollen as a Democrat.



cry from anything that could be characterized as "correcting the record." Moreover, the letter concludes with an admonition to join the author in "supporting the candidate" and then includes a reply-envelope pre-addressed to the Van Hollen for Senate committee. The reverse side of the reply-envelope is a contribution solicitation form for Van Hollen for Senate. See Exhibit C. There is no question that this communication is a solicitation for contributions to the Van Hollen committee.³ Accordingly, we request the FEC find reason to believe that the use of the EMILY's List contributor data to disseminate this solicitation is a violation of 52 U.S.C. 30111(a)(4).

In addition to the issues surrounding the use of the EMILY's List contributor data, although the letter is styled to appear as if it is the independent act of a private citizen, the letter appears to have been paid for by the Van Hollen campaign but is lacking the requisite disclaimer language.

Public communications that expressly advocate the election or defeat of a clearly identified candidate must include disclaimers. See 52 U.S.C. 30120(a); 11 CFR 110.11(a)(2). A "public communication" includes a mass mailing. 52 U.S.C. 30101(22); 11 CFR 100.26. A "mass mailing" is defined as "a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period." 52 U.S.C. 30101(23); 11 CFR 100.27. The disclaimer must identify who paid for the communication and whether or not it was authorized by a candidate. See 11 CFR 110.11(b)(1)-(3). Every disclaimer "must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity" of the communication's sponsor. 11 CFR 110.11(c)(1). Disclaimers on printed communications must be of sufficient type size to be clearly readable, must have a reasonable degree of color contrast between text and background, and must be contained in a box set apart from the rest of the communication. 11 CFR 110.11(c)(2)(i)-(iii). Communications that would require disclaimers if distributed separately must each contain the requisite disclaimer when distributed as a package of materials. 11 CFR 110.11(c)(2)(v).

The letter appears to be a public communication because it expressly advocates for the election of Rep. Van Hollen ("I hope you will join me in supporting the candidate in this race ... we want as our next US Senator in Maryland: Chris Van Hollen") and more than 500 copies of this letter were likely distributed as part of this effort. Accordingly, the letter should have contained a disclaimer stating who paid for it and whether it was authorized by Rep. Van Hollen.

Although the solicitation form on the back of the reply-envelope states that the form is paid for by Van Hollen for Senate, the letter itself does not contain any disclaimers. The letter, which is designed to appear as a personal communication from Ms. Jonas, is a distinct communication that, if transmitted separately from the solicitation form, would have required a disclaimer due to the fact that it contains express advocacy and solicits support for Rep. Van Hollen's campaign. 11 CFR 110.11(a)(2) and (c)(2)(v). Therefore, the letter should have included a clearly visible disclaimer, contained in a printed box, stating that it was "Paid for by

³ The letter does encourage recipients to "call upon Edwards [Van Hollen's opponent, Rep. Donna Edwards] to stop the disinformation campaign," but notably there are no envelopes pre-addressed to Edwards for Senate, and the letter itself does not include contact information for the Edwards Campaign.



Van Hollen for Senate."⁴ Accordingly, we request that the FEC find reason to believe that Van Hollen for Senate knowingly and willfully violated 52 U.S.C. 30120(a) by failing to include a disclaimer on the Jonas letter.

REQUESTED ACTION

Although the dollar amount associated with the allegations contained in this complaint may be minimal, the issues raised are fundamental precepts of the Act and go to the core of transparency, both in terms of ensuring that persons who make expenditures are properly disclosed and in safeguarding against abuses of publicly disclosed contributor information. For these reasons, EMILY's List respectfully requests that the Commission find reason to believe Van Hollen for Senate and Stacey Maud, in her official capacity as Treasurer knowingly and willfully violated the Federal Election Campaign Act ("FECA" or "the Act") in connection with this matter.

Sincerely,

Kate A. Belinski
Counsel to EMILY's List

District of Columbia: SS

Subscribed and sworn to before me, in my presence,

this 14th day of December, 2015

Notary Public, D.C.

My commission expires JUDITH A. MURPHY
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 28, 2019

Encl:

Exhibit A -- EMILY's List Email

Exhibit B -- Jonas Letter

Exhibit C -- Solicitation Form



⁴ If Ms. Jonas claims that she paid for the letter herself, several facts suggest that she did so in coordination with the Van Hollen committee, which would have resulted in an in-kind contribution to the committee. The union label at the bottom of the letter is identical to the union label on the solicitation form; the return address for the letter is the Van Hollen for Senate campaign address; and the presence of the Van Hollen for Senate reply-envelope and solicitation form are all indications of coordination. Moreover, the letter contained information that was conveyed to the Van Hollen committee by EMILY's List but was not known to the general public (e.g., the number of persons who received the EMILY's List email communication and the fact that it was a mistake). Regardless of who paid for it, it required a disclaimer. Note that this letter is clearly focused on the primary election, to which Ms. Jonas has already contributed the maximum amount of \$2,700 according to Van Hollen for Senate's public disclosure reports.

Test,

Our team was thrilled when we heard two of our Senate candidates are climbing in the polls: Donna Edwards in Maryland and Maggie Hassan in New Hampshire.

In Maryland, a new Washington Post/UMD poll shows Donna in the lead against her current Democratic opponent — by 10 points! And in New Hampshire, current Governor Maggie Hassan is in a dead heat against Republican Senator Kelly Ayotte — and she's only been campaigning for 18 days!

Donate to help Donna hold on to her lead through primary day, to keep Maggie in the lead, and to support all of our pro-choice Democratic women running in 2016.

New Hampshire Senate

Maggie Hassan (D)

44%

Kelly Ayotte (R)

43%

Maryland Senate

Donna Edwards (D)

38%

Chris Van Hollen (R)

28%

DONATE

I'm not surprised that voters are lining up to support our candidates. Donna Edwards has been fighting for issues like ending violence against women for years, and Maggie Hassan has helped women and families in New Hampshire by expanding Medicaid and refusing to defund Planned Parenthood.

But I am proud of how quickly they've gained momentum. And it's all thanks to supporters like you, Test. Still, if we're going to take back the Senate in 2016, we have so much more to do.

Donate to EMILY's List so that Maggie, Donna, and our other candidates have the resources they need to keep gaining ground:

<https://action.emilyslist.org/Help-Candidates-Keep-Gaining>

Thank you for always standing with our candidates.

Lucinda Guinn
Vice President of Campaigns, EMILY's List

Rosalyn Levy Jonas

Dear Mary [REDACTED],

My name is Roz Jonas. You may know me as the past Board Chair of NARAL Pro Choice America, and as a reproductive rights activist in Maryland.

I wish I didn't have to send you this letter, but I feel I must alert you about a candidate running in the Democratic Primary for U.S. Senate in Maryland whose campaign is based on deceptive and fraudulent claims. Some people have been receiving email and other solicitations from Donna Edwards -- and some have even contributed to her -- without realizing that her campaign is spreading untruths about one of our most accomplished progressive Democratic leaders.

Sadly, EMILY's List, which I have always supported in the past, has become a party to this deception by promoting the Edwards campaign despite its aggressive misleading tactics. Indeed, EMILY's List even sent out an email to over 5,000 members stating that Donna Edward's Democratic primary opponent, Chris Van Hollen, is a "Republican." While they later said it was an error, the mistake was a sad reflection of what happens when campaigns engage in overheated rhetoric that repeatedly crosses the line of truth.

By any measure Maryland Congressman and U.S. Senate candidate Chris Van Hollen has been an outstanding Democratic leader. He was the Chairman of the Democratic Congressional Campaign Committee (DCCC), helping elect numerous pro-choice women to Congress. Chris was Assistant to Speaker Nancy Pelosi, a close ally of President Obama, the person who prepped Vice President Biden for his critical 2012 debate against Paul Ryan, and currently the top Democrat on the House Budget Committee. Recently, the Co-Chair of the House Pro-Choice Caucus, Representative Louise Slaughter, attended a "Women for Van Hollen" gathering at my home, where she told the large group of gathered Maryland women how important it was for them to work to elect a smart and effective leader like Chris who has repeatedly delivered results on priorities important for women and families.

The core of the Edwards campaign's deception is the outrageous false claim that Van Hollen is a "Wall Street" Democrat. Simply put, this is a lie designed to dupe unknowing individuals to send money to the Edwards campaign. Nobody in Maryland is falling for this deception, but people

~~outside of Maryland don't know better. That is why 71 percent of Edwards'~~
campaign contributions are coming from OUTSIDE Maryland, while 73
percent of Van Hollen's support is from INSIDE Maryland.

The reality is that Chris Van Hollen has been leading the fight against Wall Street excesses while Edwards has been a sideline spectator. That is why former Labor Secretary Robert Reich -- a leading progressive crusader against Wall Street excesses -- is supporting Chris in this primary and has highlighted his record of standing up for the public interest against Wall Street interests.

Chris Van Hollen was an original Co-sponsor of the bill to close the so-called carried interest loophole for Wall Street hedge fund managers. He is also the author of the CEO-Employee Paycheck Fairness Act, which would prevent corporations from getting tax deductions for the million dollar bonuses they pay to their CEOs and Executives unless their employees are getting pay raises. Rep. Edwards has not even bothered to co-sponsor these measures in this Congress.

Rep. Van Hollen is also the author of a bold Economic Action Plan that has been hailed by progressives as an important initiative to address income inequality. The plan would, among other things, impose a fee on Wall Street transactions and use some of the revenue to increase the Child and Dependent Care Tax credit for working families.

I am incredibly disappointed in the misleading statements made by Edwards campaign, and sad and disappointed that EMILY's List has associated itself with these tactics. This kind of deception should have no place in our politics, and so I urge you to call upon Edwards to stop the disinformation campaign. And I hope you will join me in supporting the candidate in this race who has been the true fighter against Wall Street special interests, a champion for Maryland women and families, and the person of high moral character and honesty we want as our next US Senator in Maryland: Chris Van Hollen.

Sincerely,



Rosalyn Levy Jonas

Rosalyn Levy Jonas
10605 Concord Street
Kensington, MD 20895



426
Mary



170444111525

17044411526

Van Hollen for Senate
10605 Concord Street
Suite 202
Kensington, MD 20895

Campaign Phone: 301-942-3768

Enclosed is my contribution:

- ☐ General contribution
☐ For the upcoming event:

(date of event)

- ☐ Yes I will attend.
☐ No I cannot attend, but I am
enclosing a contribution.

I would like to volunteer by:

- ☐ Working in campaign office
☐ Being a grassroots fundraiser for Chris
☐ Displaying a lawn sign
☐ Going door-to-door
☐ Handing out campaign literature
☐ Working phone bank
☐ Other _____

YES! I would like to help elect Chris Van Hollen to the U.S. Senate with a contribution of:
☐ \$2,700 ☐ \$1,000 ☐ \$500 ☐ \$250 ☐ \$100 ☐ Other \$_____

Please make checks payable to "Van Hollen for Senate" • Online Contributions: www.vanhollen.org

Name _____

Address _____

City _____ State _____ Zip _____

Phone (H) _____ (W) _____

Cell _____ Email _____

Occupation _____ Employer _____

Individuals can contribute up to \$2,700 per election for a total \$5,400 per election cycle. Married couples can contribute \$10,800. Federal PAC's may contribute up to \$5,000 per election; \$10,000 per cycle. Federal law prohibits contributions to the campaign from corporations, labor organizations and national banks; from any person contributing another person's funds; from foreign nationals who lack permanent resident status; from federal government contractors. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in an election cycle.

Contributions to Van Hollen for Senate are not tax deductible.

Paid for by Van Hollen for Senate